



City of Manchester Heritage Commission
c/o City of Manchester Planning & Community Development Dept.
One City Hall Plaza
Manchester, New Hampshire 03101
603-624-6450
Fax (603-624-6529)

December 12, 2016

City Clerk's Office

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City of Manchester
Board of Mayor and Aldermen
One City Hall Plaza
Manchester, NH

Re: *Proposed Historic Preservation & Protection Ordinance*

Dear Mayor Gatsas and Aldermen:

On behalf of the City of Manchester Heritage Commission, I am forwarding a proposed ordinance for your review, and hopefully passage. This proposed ordinance, styled the *Historically and Culturally Significant Structures Preservation and Protection Ordinance*, is the product of many hours of research, study and deliberation, extending over several years. It is offered at the current time in response to the recent loss of a very significant historic structure in the city, and with the knowledge that currently there are other historically and culturally significant structures in the city which are imminently threatened with demolition. I am also enclosing a summary sheet, which briefly outlines the purpose, structure and procedural methodology of the ordinance, for your convenience.

The Heritage Commission was very sensitive to the need to balance owners' property rights with the legitimate interests of the city and its residents. Scores of similar current ordinances from throughout the country were reviewed during the drafting process. In all cases where the ordinance imposed requirements upon a property owner, every effort was made to minimize the impact, while still effectuating the purpose of the proposed ordinance.

The review process is designed to be relatively simple, and to be accomplished as swiftly and efficiently as possible. Only structures recognized to be historically or culturally significant to the city will be impacted in any appreciable way by this proposed ordinance.

The Heritage Commission unanimously supports passage of this proposed ordinance, and strongly believes the City of Manchester should have such a protective ordinance in place as soon as possible. We would be happy to meet with the appropriate committee(s) at their convenience to answer any questions they may have and to provide any assistance required.

Sincerely,

Michael Farley, Chair
City of Manchester Heritage Commission

Proposed Historically and Culturally Significant Structures Preservation and Protection Ordinance

SUMMARY

At the current time, there is virtually no mechanism for oversight or review of the partial or total demolition of structures within the City of Manchester. There is a demolition permit process, but it is essentially limited to a determination that all utilities are shut off prior to demolition. This has led to a long line of tragic demolitions, dating back to the destruction of the Boston & Maine train station, and beyond. Most recently, we have witnessed the deplorable razing of the Hill-Lassonde House, despite its being listed on the National Registry of Historic Places.

In response to these continuing losses, which are slowly depriving our city of its heritage and sense of self, and in an effort to avoid such losses in the future, the Manchester Heritage Commission is proposing passage of a "Historically and Culturally Significant Structures Preservation and Protection Ordinance."

The purposes of the ordinance are to identify, preserve and protect structures of historic, cultural and architectural significance within the City of Manchester, limit the damage to the character of the city caused by demolition of such structures, and thereby to promote the city as a great place to live and work.

The proposed ordinance achieves these purposes by instituting a process designed to quickly and efficiently review demolition permit applications on a case by case basis, in order to identify those which relate to structures that may be important and worthy of preservation. For those particular structures, the proposed ordinance establishes a "breathing room" period of approximately six months to seek alternatives to demolition, and if no alternatives are found, to document and record the details of the structure for posterity prior to demolition.

The proposed ordinance does not outright prohibit demolition of any structure. Rather, it merely allows a review/negotiation period that would only apply to buildings of historical or cultural significance.

PROCEDURE

The proposed ordinance establishes a three-step review process. The first step is an administrative review by the Building Department to determine if the structure proposed for demolition is over 50 years old, and whether over 500 square feet of the building (or the entire structure) will be demolished. Buildings less than 50 years old would not be subject to further review, and a demolition permit could be issued forthwith. The same result would occur if the building was over 50 years old, but less than 500 square feet of the building was to be torn down.

If the building is over 50 years old *and* over 500 square feet of the building (or the entire building if smaller) are to be razed, the application will be referred to the Heritage Commission within five business days for the second step of the review process. The Heritage Commission will have five

business days to undertake a summary review of the application to determine if the building is significant enough to warrant further review. It is expected this process would be accomplished through the use of a telephone or email poll of the Commission. If the Commission determines the structure lacks sufficient historical or cultural significance to warrant further review, it would so notify the Building Department and a demolition permit could be issued at that point.

If there is sufficient reason to undertake further review, the third step would commence. This would entail a delay of *up to* 6 months to allow for public hearings and negotiation with the applicant in an effort to minimize any detrimental impact that would result from demolition of a historically significant structure. Ultimately, if no alternatives to demolition are agree to, a demolition permit could be issued at the end of the 6 month period (or sooner in some cases), subject to conditions relating to photographic and documentary preservation of the structure.

There is a specific provision that allows for administrative determination whether the structure is an immediate threat to public safety, in which case a demolition permit could be issued immediately to protect the public good.

The proposed ordinance also contains several "housekeeping" provisions concerning, appeals, injunctive relief, and penalties for violations.

Historically and Culturally Significant Structures Preservation and Protection Ordinance

(HCOMM: 2.5.08)

Definitions [Note 1: The following definition is to be placed in the *Definitions* section of the zoning ordinance at Article 3.03]:

Demolition: The act of pulling down, destroying, removing, or disassembling a structure or portion thereof.

A. Purpose:

This Significant Structures Preservation and Protection Ordinance is enacted in order to (a) identify, preserve and protect structures of historic, cultural, aesthetic or architectural significance in the City of Manchester, (b) limit the detrimental outcome which demolition of such structures would have on the character of the City, and, thereby (c) promote the City as an attractive and desirable place in which to work and live. To achieve these purposes, the Heritage Commission is authorized to advise the Director of Planning and Community Development with respect to demolition permit applications affecting or potentially affecting culturally or historically significant resources within the City. Statutory authority for this ordinance is provided by NH RSA 674:44-b, I (d).

B. Criteria:

Any structure or part of a structure in the City of Manchester will fall under the provisions of this ordinance where:

- (1) The proposed demolition is greater than 500 square feet of gross floor area or will result in the razing of the entire structure; and
- (2) The structure was constructed more than 50 years before the date of the application for demolition permit. The age of the structure is to be determined by documentation provided by the applicant and verified by documentation on file with the City.

The foregoing notwithstanding, nothing herein shall be construed as to allow destruction or demolition of any structure situated in any Historic District designated in the Zoning Ordinance.

C. Procedure:

(1) When a completed application for a demolition permit is submitted to the Planning and Community Development Department, the Director of that Department shall determine if the structure, or portion thereof, meets the above criteria, and if it does, shall forward a copy of the application to the Chair of the Heritage Commission within five business days of receiving such a completed application, requesting that the application be reviewed for determination pursuant to this ordinance.

(2) The Heritage Commission shall make a preliminary determination regarding that status of the structure and shall notify the Director of the Planning and Community Development Department of the results of that determination within five business days of the Commission's Chair having received a copy of the application from the Director.

- (a) If the structure is found to have no historical, cultural, aesthetic or architectural significance, the Director of the Planning and Community Development Department may issue a demolition permit.

(b) If the structure is found to likely have historical, cultural, aesthetic or architectural significance warranting further review, the Commission shall forward to the Director of the Planning and Community Development Department a decision in opposition to the granting of a permit for demolition. In such case, no permit shall be issued until the Commission undertakes a more thorough investigation and provides the Director of the Planning and Community Development Department with a final written determination. This investigation and determination shall be completed within 90 calendar days of the date of their preliminary determination.

(3) During the 90 day review period, the Commission shall conduct such public hearings and investigations as it may determine to be necessary in order to make an informed opinion regarding the granting of such permit. The applicant proposing the demolition shall be invited to attend the public hearing(s) to hear the concerns or alternatives that are discussed by the Commission and the public. All public hearings shall be noticed at least five days before the date of the hearing as provided by applicable law.

(4) After conducting at least one public hearing, the Commission shall deliberate and make a final decision whether the structure proposed for demolition has historical, cultural, aesthetic or architectural significance. In making its decision, the Commission shall, at the least consider the following criteria:

- (a) The structure is of such interest or quality that it would likely meet national, state or local criteria for designation as a historic, cultural, or architectural landmark.
- (b) The structure is of such unusual or uncommon design, texture, or materials that it could not be reproduced, or could be reproduced only with great difficulty and expense.
- (c) The structure is of such historic, cultural, aesthetic or architectural interest that its removal would be detrimental to the public interest.
- (d) Retention of the structure would help preserve and protect a historic place or area of historic, cultural, aesthetic or architectural interest to the City.

(5) Within two business days of the public hearing, the Commission shall notify the Director of the Planning and Community Development Department of the results of that hearing. If the structure is found not to have significance, the requested demolition permit may be issued.

(6) If the structure is found to have historical, cultural, aesthetic or architectural significance and its loss is deemed to be detrimental to the community, then the Commission shall meet with the applicant within 10 business days of the public hearing to discuss alternatives to demolition. The Director of the Planning and Community Development Department shall be informed once the Commission's meeting with the applicant has taken place and no demolition permit shall be issued for a period not to exceed six months from the date of this meeting.

D. Demolition:

(1) If no alternatives to demolition have been identified and agreed to by the Commission and the applicant after their meeting and the six month waiting period provided for in the previous section has elapsed, then the applicant may proceed with demolition provided a permit is issued by the Planning and Community Development Department Building Department. The Commission shall encourage the applicant to salvage significant architectural features.

(2) Based upon a recommendation from the Heritage Commission, the Planning and Community Development Department shall require that, as a condition of receiving the demolition permit, the applicant shall provide the Heritage Commission with written and photographic documentation describing the appearance and historic, cultural, aesthetic or architectural importance of the structure to be

demolished. Such documentation shall be carried out to the satisfaction of the Heritage Commission which shall maintain an original version of such documentation in public trust. Issuance of the demolition permit will not take place until after the Commission has received, and approved the scope and quality of, the required documentation.

(3) Nothing in this article shall be construed to prevent immediate demolition where public safety is at stake, provided that prior to commencing such emergency demolition the Director of the Planning and Community Development Department shall issue a written determination that (a) the structure itself (as opposed to any use thereof) poses an immediate public hazard or threat to public safety, and (b) demolition of the structure is the only available recourse, which written determination shall contain the specific factual basis for each of the required conclusions.

F. Appeals:

Appeals from the decision(s) of the Heritage Commission or the Planning and Community Development Department made pursuant to this article shall be conducted as provided in NH RSA 676:17.

G. Injunctive Relief:

The Heritage Commission is authorized to seek injunctive relief in any court of competent jurisdiction for the purpose of enforcing the provisions of this article.

H. Penalties for Violation:

(1) After filing an application for demolition permit, and during the review periods set forth in this article, the owner of the structure in question shall adequately maintain and protect the structure in order to prevent any further deterioration. Failure to do so shall be considered demolition by neglect, and subject to the penalties contained herein.

(2) In the case of full or partial demolition of any structure subject to the provisions of this article in the absence of or in advance of the issuance of a valid demolition permit, the Director of the Planning and Community Development Department shall impose a two-year restriction on the property during which no earthwork, landscaping, construction or further demolition may take place on the subject property or on any adjoining parcels under common ownership and control without review and approval of the Heritage Commission. The restriction may only be lifted by written agreement of the Director of the Planning and Community Development Department and the Heritage Commission.

(3) In addition to the foregoing, any person who knowingly and willfully violates the provisions of this article shall be fined \$250 per day if a natural person, and \$1,000 per day if a corporation, LLC or other legally recognized entity, each day of noncompliance constituting a separate violation. All fines imposed shall be collected and made payable to the City of Manchester.

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Manchester, NH Code of Ordinances

HERITAGE COMMISSION**§ 32.120 ESTABLISHED.**

A Heritage Commission is hereby established in the city in accordance with R.S.A. 673.

(Ord. passed 10-1-96)

§ 32.121 PURPOSE.

In accordance with R.S.A. 674-44-a, the purpose of the Heritage Commission shall be to insure the proper recognition, use and protection of resources, primarily manmade, that are valuable for their historic, cultural, aesthetic, or community significance within their natural, built, or cultural context.

(Ord. passed 10-1-96)

§ 32.122 COMPOSITION; TERMS; VACANCIES.

(A) The Heritage Commission shall consist of seven members who shall be appointed by the Mayor with approval by the Board of Mayor and Aldermen.

(B) Each Heritage Commission member shall be a resident of the city. One commissioner shall be a member of the Board of Mayor and Aldermen. Where practicable, five alternate members shall be appointed. When an alternate sits in absence or disqualification of a regular member, the alternate shall have full voting powers. In determining each member's qualifications, the Board of Mayor and Aldermen shall take into consideration the appointee's demonstrated interest and ability to understand, appreciate and promote the purpose of the Heritage Commission.

(C) Terms shall be for three years, commencing the first day of July, and staggered in such a way as to allow appointments each year.

(D) In accordance with R.S.A. 673:12, the Board of Mayor and Aldermen shall, within 60 days of a vacancy, cause the appointment of another Commissioner to fill said vacancy for the duration of the unexpired term.

(Ord. passed 10-1-96)

§ 32.123 POWERS AND DUTIES.

In accordance with R.S.A. 674:44-b, the Heritage Commission shall have advisory authority specifically as follows:

- (A) Survey and inventory all cultural and historic resources.
- (B) Conduct research and publish findings, including reports to establish the legal basis for a district and preparation of historic district ordinances prior to its adoption or amendment as provided in R.S.A. 675:6.
- (C) Assist the Planning Board, as requested, in preparation of those sections of the master plan which address cultural and historic resources.
- (D) Advise, upon request, local agencies and other local boards in their review of requests on matters affecting or potentially affecting cultural and historic resources. When information or a recommendation is requested by another board or agency the Heritage Commission shall respond within 30 days.
- (E) Coordinate activities with appropriate service organizations and nonprofit groups.
- (F) Publicize its activities.
- (G) Hire consultants and contractors as needed.
- (H) Receive gifts of money in the name of the city, subject to approval from the Board of Mayor and Aldermen, such gifts to be managed and controlled by the Commission for its proper purposes.
- (I) Hold meetings and hearings necessary to carry out its duties. Regular meetings shall be held at least four times a year.

(Ord. passed 10-1-96)

§ 32.124 APPROPRIATIONS.

(A) The city having established a Heritage Commission, may appropriate money as deemed necessary to carry out its purposes. The whole or any part of money so appropriated in any year and any gifts of money received pursuant to R.S.A. 674-44-b shall be placed in a heritage fund by the Heritage Commission for its purposes without further approval from the Board of Mayor and Aldermen, except that major expenses beyond normal operations and administration shall require concurrence by the Board.

(B) The city finance officer, pursuant to R.S.A. 41:29 shall have custody of all monies in the heritage fund and shall pay out same only upon order of the Heritage Commission. The disbursement of heritage funds shall be authorized by a majority of the Commission members.

(Ord. passed 10-1-96)

§ 32.125 CONSOLIDATION.

(A) In accordance with R.S.A. 674:44-b III, the Heritage Commission shall assume the duties and powers granted to the Historic District Commission by Article XI of the Zoning Ordinance

pertaining specifically to the Amoskeag Corporation Housing Historic District and the Amoskeag Millyard Historic District.

(B) The members of the Historic District Commission shall serve out their terms as members of the Heritage Commission.

(Ord. passed 10-1-96)

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Manchester, NH Code of Ordinances

CHAPTER 151: BUILDING REGULATIONS

Section

General Provisions

- 151.01 Adoption of International Building Code
- 151.02 Abandoning excavations
- 151.03 Air rights
- 151.04 Issuance of building permits; state provisions adopted

Trailer Parks and Tourist Camps

- 151.40 Definitions
- 151.41 Parking trailers outside parks
- 151.42 Enforcement

- 151.99 Penalty

GENERAL PROVISIONS**§ 151.01 ADOPTION OF INTERNATIONAL BUILDING CODE.**

Certain documents, three copies of each which are on file in the office of the City Clerk of the City of Manchester being marked and designated as the *International Building Code*, 2000 Edition, including Appendix Chapters B, G, H and J, as published by the International Code Council, Inc., be and is hereby adopted as the Building Code of the City of Manchester in the State of New Hampshire, for the control of buildings and structures as herein provided, and each and all of the regulations, provisions, penalties, conditions and terms of said Building Code are hereby referred to, adopted, and made a part hereof, as if fully set out in this section, with the additions, insertions, deletions and changes prescribed in § 2 of the ordinance adopted September 4, 2001.

('71 Code, § 6-12) (Ord. passed 2-7-89; Am. Ord. passed 9-4-01)

§ 151.02 ABANDONING EXCAVATIONS.

(A) *Prohibited.* No person shall excavate a lot or parcel of land for the purpose of erecting a foundation to erect a building thereon and then abandon the project.

(B) *Time for filling.* If a cellar hole has been excavated and the project abandoned, the party responsible for the excavation shall cause the excavation to be refilled within a period of 60 days after the project has been abandoned.

('71 Code, § 6-1) Penalty, see § 151.99

§ 151.03 AIR RIGHTS.

The Board of Mayor and Aldermen is hereby authorized to grant air rights pursuant to and consistent with the provisions of R.S.A. 48-B.

('71 Code, § 6-2) (Ord. passed 3-3-81)

§ 151.04 ISSUANCE OF BUILDING PERMITS; STATE PROVISIONS ADOPTED.

The provisions of R.S.A. 676.12 with respect to the issuance of building permits are hereby adopted.

('71 Code, § 6-3) (Ord. passed 9-6-83; Am. Ord. passed 5-6-97; Am. Ord. passed 4-21-98)

TRAILER PARKS AND TOURIST CAMPS

§ 151.40 DEFINITIONS.

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

CABIN PLOT. A section of ground not less than 30 feet by 40 feet in area, upon which only one camp cottage, or cabin, is located.

TOURIST CAMP. Any camp, park, court, site, lot, parcel, or tract of land upon which any camp cottage or cabin is maintained for the accommodation of transients, whether or not a charge is made.

TRAILER. Any vehicle or structure designed and constructed in such a manner as will permit occupancy thereof as sleeping quarters for one or more persons, or the conduct of any business or profession, occupation, or trade, or used as a selling or advertising device, and so designed that it may be mounted on wheels and used as a conveyance on streets, whether propelled or drawn by its own or other motive power. The term **TRAILER** shall not include a device used exclusively upon stationary rails or tracks.

TRAILER PARK. Any park, court, camp, site, lot, parcel, or tract of land maintained for the purpose of providing accommodations for any trailer or upon which any trailer is parked, and shall include all buildings used as part of the equipment thereof, whether or not a charge is made

for the use of the trailer park and its facilities. The term **TRAILER PARK** shall not include trailer sales lots on which unoccupied trailers are parked for purposes of inspection and sale.

UNIT. A section of ground in a trailer park of not less than 1,000 square feet of unoccupied space in an area designated as the location for only one automobile and one trailer. ('71 Code, § 25-1)

§ 151.41 PARKING TRAILERS OUTSIDE PARKS.

(A) It shall be unlawful, within the limits of the city, for any person to park any trailer on any street or other public place, or on any tract of land owned by any person, occupied or unoccupied, except as provided in this section.

(B) Emergency or temporary stopping or parking is permitted on any street in the city for not longer than 24 hours, subject to any other and further prohibitions, regulations, or limitations imposed by the traffic and parking regulations or ordinances for that street.

(C) No person in the city shall park or occupy any trailer on the premises of any occupied dwelling or on any lot which is not a part of the premises of any occupied dwelling either of which is situated outside an approved trailer park; except, the parking of only one trailer in an accessory private garage building, or in a rear yard in any district, is permitted providing the trailer is the property of a bona fide visitor with the owner or tenant of the property and shall not have its wheels removed or remain on the premises for a period exceeding 30 days.

('71 Code, § 25-2) (Am. Ord. passed 2-7-89; Am. Ord. passed 11-7-01) Penalty, see § 10.99

Cross-reference:

Traffic code, see Title VII

§ 151.42 ENFORCEMENT.

It shall be the duty of the Director of Planning and Community Development and the Police Department to enforce the provisions of this chapter.

('71 Code, § 25-3) (Ord. passed 2-7-89; Am. Ord. passed 2-7-09)

§ 151.99 PENALTY.

Any person, firm or corporation who violates any provision of this chapter for which another penalty is not specifically provided shall, upon conviction, be subject to a fine not exceeding the maximum allowed by R.S.A. 47:17 or other law. Each day a violation occurs or continues shall constitute a separate offense.

('71 Code, § 17³/₄-1)